IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 135 of 2007

IN

COURT RECEIVER'S REPORT NO. 13 OF 2007

In

SUIT NO.3782 OF 1989

Mr.Uttam Devjiram Gianani .. Appellant

versus

Shri Ram Tuljaram Shahni & Ors. .. Respondents

...

Mr.Nimish Pandya and Mrs.Meena Shah i/b Pandya & Co. for the appellant.

Ms.Dipti Chand with Mr.Ankur Gupta i/b Advani & Co. for respondent nos.2, 3 and 6.

Mr.D.V. Deokar, 1st Asstt. to Court Receiver present.

CORAM : R.M.S. KHANDEPARKAR
AND D.G.KARNIK, JJ

DATED : 9th April 2007.

P.C.:

1. The appellant challenges the impugned order dated 2nd February 2007 passed in Chamber Summons no.686 of 2006 taken out by the appellant in the Court Receiver's Report no.13 of 2007 in Suit no.3782 of 1989. The grievance of the appellant is that though the appellant was liable to pay the standard rent and permitted increases in the rent, the appellant cannot be compelled to pay the penal interest imposed by the society. Undisputedly, penal interest relates to the amount due and payable to society including the amount in relation to parking charges of the car of the appellant. Once the record clearly shows that the appellant is in occupation of the flat and is liable to pay parking charges, it cannot be disputed that such an occupant, if he uses the society's premises for parking the car and if the members are made liable to pay parking fees, the appellant also would be liable to pay parking fees in respect of his car. If such an amount has remained without being paid for considerable time, society's claim to charge interest on such amount also cannot be disputed.

2. No fault can be found in the dismissal of the chamber summons which was taken out by the appellant who is liable for payment of the amount equivalent to the standard rent and permitted increase.

3. Grievance was also sought to be made that the Chamber Summons was disposed of although the same was not on board on the day it was heard and disposed of. It is a common practice of the court that the matters in the nature of chamber summonses or even the writs or appeals many a times are being taken up on board and they are being heard and finally disposed of on the same day, unless there is specific objection raised in that regard by the opposite party. In the case in hand, even assuming that the chamber summons was not on board when it was disposed of, the record clearly discloses that the appellant was present on that day and the Chamber Summons was disposed of only after hearing the parties, including the appellants. Undoubtedly, there is a mistake on the part of the steno who has typed the impugned order in the sense that he has not typed the cause title of the chamber summons though he has typed the

cause title in relation to the court receiver's report. However, on account of the mistake of the steno, in that regard, the appellant cannot be permitted to take undue advantage thereof contending that the Chamber Summons was disposed of even though it was not on board. The same being in accordance with the practice of the court and the appellant having been heard in the matter, no grievance can be made in the appeal.

4. For the reasons stated above therefore there is no case made out for interference in the impugned order. Appeal,therefore, fails and is hereby dismissed.

(R.M.S. KHANDEPARKAR, J)

(D.G. KARNIK, J)